

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

ALLEN PENA; aka PENA, §  
§  
Petitioners, §  
VS. § CIVIL ACTION NO. 2:14-CV-334  
§  
WILLIAM STEPHENS, §  
§  
Respondent. §

**OPINION AND ORDER DENYING MOTIONS  
FOR RULE 59(e) AND 60(b) RELIEF**

Final judgment dismissing Petitioner's application for § 2254 relief and denying Petitioner a Certificate of Appealability was entered June 17, 2015 (D.E. 86, 87). Petitioner filed a Notice of Appeal June 29, 2015 (D.E. 88). On July 13, 2015, Petitioner filed motions to alter or amend the judgment and for relief from judgment (D.E. 97, 98).

A motion which challenges a prior judgment on the merits is treated either as a motion to alter or amend the judgment under Rule 59 or a motion for relief from judgment under Rule 60(b). *Ford v. Elsbury*, 32 F.3d 931, 937 n. 7 (5<sup>th</sup> Cir. 1994). If the motion is filed within twenty-eight (28) days<sup>1</sup> of entry of judgment, the motion falls under Rule 59. *Id.* If it is filed after that, it falls under Rule 60(b). *Id.* In this case, final judgment was entered on June 17, 2015 (D.E. 87), and Petitioner's motions were filed on July 13, 2015 (D.E. 97, 98), within twenty-eight (28) days of entry of final judgment, and thus both are considered properly under Rule 59(e).

---

<sup>1</sup> Effective December 1, 2009, FED. R. CIV. P. 59(e) was amended, increasing the time limit for filing a motion to alter or amend the judgment from ten (10) to twenty-eight (28) days.

“A Rule 59(e) motion is a motion that calls into question the correctness of a judgment. Rule 59(e) is properly invoked ‘to correct manifest errors of law or fact or to present newly discovered evidence.’” *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002) (quoting *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989)).

Petitioner has failed to cite to any manifest errors of law or fact, and has presented no new evidence. He simply repeats the arguments made in his earlier pleadings. Petitioner's motion to alter or amend the judgment (D.E. 97), as well as his motion for relief from judgment (D.E. 98) are denied.

ORDERED this 5th day of August, 2015.

  
Nelva Gonzales Ramos  
NELVA GONZALES RAMOS  
UNITED STATES DISTRICT JUDGE